IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 22631 of 2004

Between:

T.Jaihind Goud S/o.T.Sree Ramulu
H.No.7-1-237/9/A, Fatehnagar 'X' Road,
Balkampet, Hyderabad.

..... PETITIONER

AND

1 Municipal Corp of Hyderabad rep by its Commissioner
Tank Bund Road, Hyderabad.
2 The Assistant City Planner,
M.C.H.Circle No.5, Khairthabad,
Hyderabad.
3 B. Shyam Sunder Goud rep. by its GPA Holder Vishnu Associates at Fatehnagar Road, Near Yellamma temple, Balkampet, Hyderabad
R3 is impleaded as per court order dt. 20-12-2004 in WPMP 30974 of 2004

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ in the nature of Mandamus or any other appropriate writ order or direction directing the respondents to consider the representation of the petitioner dt 17-6-2004 and take appropriate action, by declaring the action of the respondents in not examining the representation of the petitioner as illegal and arbitrary, and to pass such other order or orders.

Counsel for the Petitioner : MR. S.GOPAL RAO

Counsel for the Respondents 1 & 2 : Smt. G.Jyothi Kiran, S.C. for MCH.,

Counsel for the Respondent No.3: K.Ravindra Kumar

The Court at the stage of admission made the following:

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.22631 OF 2004

ORDER :

The petitioner claims to be the owner and possessor of House No.7-1-237/9/A of Fateh Nagar 'X' Road, Balkampet, Hyderabad. It is alleged that the third respondent who is his neighbour entered into an agreement with a builder by name M/s. Vishnu Associates for construction and development of his premises bearing Nos.7-1-238, 238/1 & 238/2 after demolition of the existing structures. It is alleged that the said builder has been constructing the new building with many deviations from the sanctioned plan and that he is also unauthorisedly constructing a cellar due to which the petitioner's Northern side compound wall has collapsed and his building has developed cracks. In the circumstances, he made a representation to the 1st respondent Corporation on 17-06-2004 bringing to their notice the illegal constructions being made by the third respondent and requesting to take the necessary action, however, they failed to respond. Hence, this writ petition seeking a declaration that the alleged inaction on the part of the respondents 1 and 2 is arbitrary and illegal.

This Court by order dated 20-12-2004 while directing notice to the respondents, ordered stay of further constructions.

On behalf of the respondents 1and 2, the Assistant City Planner filed a counter-affidavit stating that the representation of the petitioner dated 17-06-2004 has already been considered and he was informed by letter dated 09-08-2004 that the builder M/s. Vishnu Associates filed O.S.No.262 of 2004 in the Court of the IV-Junior Civil Judge, City Civil Court, Hyderabad and an interim injunction is operating against the Corporation. It is further stated that the builder has illegally and unauthorisedly constructed the cellar without prior permission from the Corporation as required under Sections 428 and 433 of the Hyderabad Municipal Corporation Act, 1955 and that the builder has also deviated from the sanctioned plan under the guise of the ad interim injunction granted in I.A.No.71 of 2004 in O.S.No.262 of 2004. The Corporation has conducted Panchnama on 4-8-2004 by recording the stage of the construction and it has also filed the necessary written statement in the civil suit along with an application to vacate the interim injunction. It is stated that the construction of the cellar is unauthorised and illegal. It is also mentioned that the cellar was constructed leaving the required mandatory open space as per the sanctioned plan towards Northern side though the required mandatory open space was violated so far as the other three sides are concerned. The petitioner was assured that the necessary action will be taken as soon as the order of injunction was vacated. It is also stated that in compliance with the interim directions of this Court the Corporation has directed the third respondent to stop all further constructions and Panchnama has been conducted on 23-12-2004 as to the stage of the construction. Hence, the alleged inaction on the part of the respondents is incorrect.

In the counter-affidavit filed on behalf of the third respondent, it is stated that no illegal construction is being made on the suit property and that the petitioner is in no way prejudiced by the construction being made by the builder. It is also stated that in view of the attempted illegal action on the part of the respondents 1 and 2 to stop all further constructions, O.S.No.262 of 2004 on the file of IV-Junior Civil Judge, City Civil Court, Hyderabad has been filed and the interim injunction granted by the Court after notice to the Municipal Corporation of Hyderabad is subsisting.

I have heard the learned Counsel for both the parties and perused the material on record.

In view of what has been stated in the counter-affidavit of the respondents 1 and 2, I am unable to hold that there is any inaction on the part of the respondents 1 and 2 as alleged by the petitioner. As can be seen, the respondents 1 and 2 have already informed the petitioner about the steps that have been taken by them and the petitioner was assured that the further action will be taken as soon as the order of injunction granted by the Civil Court is vacated. It is also relevant to note that the alleged illegal construction of the building is the subject matter of O.S.No.262 of 2004 pending before the competent Civil Court and as can be seen the 1st respondent Corporation has already filed a petition to vacate the interim injunction. Therefore, I am not inclined to express any opinion with regard to the correctness of the rival claims made by the respective parties. Instead, I deem it appropriate to dispose of the writ petition with a direction that I.A.No.71 of 2004 in O.S.No.262 of 2004 on the file of IV-Junior Civil Judge, City Civil Court, Hyderabad shall be disposed of after hearing all the parties concerned as expeditiously as possible preferably within a period of two weeks from the date of receipt of this order. Till such time, the interim order granted by this Court on 20-12-2004 directing stay of further constructions shall continue.

It is open to the writ petitioner to get himself impleaded to the suit proceedings if he so chooses.

The Writ Petition is accordingly disposed of. No costs.

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February, 2005.

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To

1 The Commissioner, Municipal Corp of Hyderabad,
Tank Bund Road, Hyderabad.
2 The Assistant City Planner,
M.C.H.Circle No.5, Khairthabad,
Hyderabad.
3) **CD copies**